

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MN

DAVID K. WINTERROTH,)	
)	
Petitioner,)	
)	
v.)	Docket No. 3543-11
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER OF DISMISSAL AND DECISION

This case was called from the calendar for the trial session of the Court at Las Vegas, Nevada on March 12, 2012. There was no appearance by or on behalf of petitioner. Respondent's counsel appeared and reported that he expected petitioner to be at calendar call. The Court scheduled a time by which respondent was to prepare a written motion to dismiss for failure to properly prosecute. Respondent contacted petitioner before respondent filed a motion to dismiss. Petitioner informed respondent that he misunderstood the date the session began, thinking it was the following Monday.

This case was recalled from the calendar on March 15, 2012 for trial. Petitioner and respondent's counsel appeared and a partial trial was held. Petitioner testified, under penalties of perjury, that he failed to file a return for 2007 because he was not required to file a return or pay any income tax. He planned on filing a return for 2007 with zeros on the lines for income items and claiming a refund of all taxes withheld from his wages as a welder with Republic Silver State Disposal. He also questioned respondent's authority to prepare a substitute for return for him for 2007. He raised several arguments that have been soundly rejected. See, e.g., United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) (court characterized argument that category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute); Abdo v. United States, 234 F. Supp. 2d 553, 563 (M.D.N.C. 2002), aff'd 63 Fed. Appx. 163 (4th Cir. 2003) (court noted claim that wages are not income "has been rejected as many times as it has been asserted"); Wnuck v. Commissioner, 136 T.C. 498, 503-504 (2011) ("courts have addressed and rejected many of the recurring frivolous anti-tax arguments, including ... the general argument that wages are not subject to the income tax").

Petitioner did not file a pretrial memorandum despite the Court's order nor did petitioner stipulate to as many facts as possible as required by Rule 91, Tax Court Rules of Practice and Procedure. As previously mentioned, petitioner did not appear when the case was called from the calendar for the trial session. At the scheduled trial, petitioner ignored every opportunity the

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Court offered him to provide sufficient facts to support any legitimate contentions he might have. Petitioner continued to resort to discredited tax protestor-type arguments and failed to present any relevant, nonfrivolous positions relating to a redetermination of the deficiency. He made no effort to present anything that would bear on the legitimate issues in this case.

Petitioner's numerous frivolous arguments and actions that wasted the Court's and respondent's limited resources prompted the Court to consider dismissing the petition for failure to properly prosecute. Respondent filed a motion to dismiss for failure to properly prosecute on March 15, 2012. We may dismiss a case at any time and enter a decision against the taxpayer for failure to properly prosecute or for other cause we deem sufficient. Rule 123(b). Dismissal of a case is a sanction resting in the trial court's discretion. Levy v. Commissioner, 87 T.C. 794, 803 (1986). Dismissals for failure to properly prosecute normally arise where a party fails to appear at trial. Dismissals of cases have been affirmed, however, where the taxpayer appeared at trial attempting to stall the proceedings and delay the collection of taxes. See, e.g., Noli v. Commissioner, 860 F.2d 1521 (9th Cir. 1988); Montgomery v. Commissioner, 367 F.2d 917 (9th Cir. 1966). Courts have the inherent power to issue orders as they deem necessary and prudent to achieve the orderly and expeditious disposition of their cases. See Roadway Exp., Inc. v. Piper, 447 U.S. 752, 764-765 (1980); Link v. Wabash R.R. Co., 370 U.S. 626, 633 (1962); Williams v. Commissioner, 92 T.C. 920, 932-933 (1989). In light of the foregoing, we shall grant respondent's motion to dismiss for failure to properly prosecute and sustain respondent's determinations in the statutory deficiency notice. See, e.g., Marryat v. Commissioner, T.C. Memo. 1990-438.

Each time petitioner raised an argument, the Court informed him that this Court and other courts have consistently found his arguments to be frivolous and/or sanctionable under section 6673, which authorizes the Tax Court to require a taxpayer to pay to the United States a penalty up to \$25,000 whenever it appears that proceedings have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless. The Court warned petitioner with respect to each argument he raised that he was at risk of the Court imposing a penalty against him. In addition, respondent orally warned petitioner that he was at risk of the Court imposing a penalty against him for his frivolous arguments. Respondent moved to impose a penalty under section 6673 and recommended a \$5,000 penalty.

Petitioner is no stranger to this Court. He had a collection review matter for 2006 (Docket No. 4804-09L). The Court in that docket sustained the frivolous return penalty under section 6702 against petitioner. The Court also advised petitioner in the case for 2006 of Notice 2007-30, 2007-1 C.B. 883, in which the Commissioner lists and specifies frivolous positions many of which petitioner raised in the case for 2006 as here for 2007.

Petitioner continued to raise frivolous arguments in this case despite several warnings. Petitioner asserted that his arguments are based on the Code and Supreme Court cases. Petitioner's arguments are familiar to this Court and other Federal courts and have been soundly

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rejected on numerous occasions. By citing, out of context, selected text from the Code, petitioner concludes that he is not liable for Federal income tax on his wages. Petitioner has followed in the footsteps of numerous others who have unsuccessfully attempted to find a way to avoid paying Federal income tax.

Petitioner is pro se and seeks leniency from the Court. Pro se status, however, is not a license to litter the dockets of the Federal courts with ridiculous allegations. Parker v. Commissioner, 117 F.3d 785, 787 (5th Cir. 1997). Petitioner's tactics have consumed valuable Government resources. These tactics should not be condoned. They damage the integrity of the Federal tax litigation system because the time and attention the Court and respondent must devote to these frivolous arguments deprives other taxpayers with genuine controversies. See Abrams v. Commissioner, 82 T.C. 403, 412 (1984). When the Court has been faced with groundless arguments that waste the Court's and respondent's limited time and resources, we have consistently found that the taxpayer deserves a penalty under section 6673(a)(1), and that penalty should be substantial if it is to have the desired deterrent effect.

The purpose of section 6673 is to compel taxpayers to think and to conform their conduct to settled tax principles. Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); see also Grasselli v. Commissioner, T.C. Memo. 1994-581. In this proceeding now before the Court, petitioner asserts nothing but frivolous and groundless arguments. It is apparent from the entire record that petitioner instituted or maintained this proceeding primarily, if not exclusively, as a protest against the Federal income tax system and his proceeding in this Court is merely a continuation of petitioner's refusal to acknowledge and satisfy his tax obligations. We are convinced that no purpose would be served in repeating all that has been said about his frivolous and misguided arguments. Wnuck v. Commissioner, 136 T.C. 498 (2011). We therefore shall require petitioner to pay a penalty of \$5,000 pursuant to section 6673(a)(1). In addition, we take this opportunity to admonish petitioner that the Court will consider imposing a greater penalty if petitioner returns to the Court and advances similar arguments in the future.

Upon due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Failure to Properly Prosecute and to Impose a Penalty Under Section 6673, dated March 15, 2012, is granted. It is further

ORDERED and DECIDED that there is due from petitioner a \$30,679 deficiency in income tax for 2007, a \$5,840 addition to tax under I.R.C. section 6651(a)(1), a \$3,763 addition to tax under I.R.C. section 6651(a)(2) and a \$1,157 addition to tax under I.R.C. section 6654 for 2007. It is further

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ORDERED and DECIDED that petitioner shall pay to the United States a \$5,000 penalty under I.R.C. section 6673.

(Signed) Diane L. Kroupa
Judge

ENTERED: **MAR 23 2012**